

HOUSE No. 913

By Mr. Loscocco of Holliston, petition of Paul J.P. Loscocco and Susan W. Pope for legislation to allow the disclaimer of certain property owned jointly or as tenants by the entirety. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO ALLOW THE DISCLAIMER OF CERTAIN PROPERTY OWNED JOINTLY OR AS TENANTS BY THE ENTIRETY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 2 of chapter 191A of the General Laws as appearing in
2 the 2000 Official Edition is hereby amended by deleting para-
3 graph numbered 2 and the last paragraph of said section and by
4 substituting in place thereof the following:

5 2. As donee, grantee, beneficiary of an inter-vivos trust, benefi-
6 ciary of a nontestamentary instrument, or surviving joint tenant or
7 tenant by the entirety, except that a surviving joint tenant or tenant
8 by the entirety of a bank account, brokerage account or other
9 investment account (such as an account held at a mutual fund)
10 may not disclaim that portion of an interest in any such account or
11 investment which is allocable to amounts contributed by him or
12 her to the interest in such account or investment; through exercise
13 or non-exercise of a power of appointment exercisable by deed, or
14 nontestamentary exercise or non-exercise of a power of appoint-
15 ment exercisable by deed of trust or will; under any deed, assign-
16 ment, or other nontestamentary instrument of conveyance or
17 transfer; by succession in any manner described in this clause to a
18 disclaimed interest; or in any other manner not specified above
19 under a nontestamentary instrument or by operation of any statute
20 or rule of law.

21 Disclaimer may be made for a beneficiary by such beneficiary's
22 attorney-in-fact who has been appointed under a then existing
23 durable power of attorney which has been executed by such bene-

24 ficiary pursuant to Chapter 201B, provided that such attorney-in-
25 fact is authorized by the terms of such durable power of attorney
26 to execute disclaimers on behalf of such beneficiary. Such
27 attorney-in-fact may execute, acknowledge and file such dis-
28 claimer on behalf of such beneficiary in accordance with the pro-
29 visions of this chapter in the same manner as said beneficiary
30 could have done personally. Disclaimer may be made for a bene-
31 ficiary under a legal disability by the duly appointed guardian or
32 conservator of such beneficiary, and for a deceased beneficiary by
33 the legal representative of such beneficiary's estate; provided, in
34 any case, however, that the probate court having jurisdiction of
35 the estate of such beneficiary shall have decreed, upon complaint
36 filed by such guardian, conservator, or legal representative, that
37 such disclaimer is in the best interests of those interested in the
38 estate of such beneficiary and not detrimental to the best interests
39 of the beneficiary or the estate of such beneficiary, and that such
40 guardian, conservator, or legal representative is authorized to exe-
41 cute and file such disclaimer on behalf of such beneficiary in
42 accordance with the provisions of this chapter.